IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.80 OF 2007

Anandrao Bhagwan Sanmukh & Ors. .. Appellants.
Vs.
Keshav Dattatraya Mahamuni & Ors. .. Respondents.

Mr.S.S.Patwardhan for the appellants.

CORAM : D.B.BHOSALE, J.
DATED : 7TH FEBRUARY, 2007

P.C.:

. Heard learned counsel for the appellants.

2. This second appeal is directed against the concurrent findings recorded by the courts below by which the suit filed by the respondents-plaintiffs for possession and perpetual injunction has been decreed. The dispute was pertaining a open plot admeasuring 28 X 10 ft. Both, the plaintiffs and the defendants, claim ownership over this plot. Admittedly, the plot in dispute is right behind the shop premises of the plaintiffs and adjacent to the property of the defendants. The question which fell for consideration of the courts below was whether the suit plot is a part and parcel of CTS No.3970 owned by the defendants or CTS No.3972 owned by the plaintiffs. Both the courts below after having taken into consideration the entire evidence on record and in particular evidence of P.W.1 and P.W.2 as also Exhibits 82, 59, 69 and 75 have recorded a categoric finding that the suit plot is the part and parcel of CTS No.3972 and not CTS

No.3970 as claimed by the appellants. Mr.Patwardhan, learned counsel for the appellants submitted that the plea of limitation and adverse possession was not considered by the courts below at all and on that ground alone the appeal deserves to be allowed. The plaintiffs filed the suit in 1991 stating therein that the defendants took possession of the open space in the year 1990 and in collusion with the city survey authorities the suit plot was shown as the part of CTS No.3970. It is clear from the observations made by the appeal court and as also the other material on record that the plea of adverse possession is not sustainable in the facts and circumstances of this case. Even, inclusion of the suit plot by the city survey authorities in CTS No.3970 also would not help the appellant since it was done behind the back of the respondent-plaintiff and he had no notice while affecting such change for the first time in 1990. The appeal court has considered this aspect in paragraphs 13, 14 and 15 of the judgment. Keeping that in view and considering that there are concurrent findings of fact recorded by the courts below and as I find that there is sufficient material on record to sustain those findings and considering extremely limited jurisdiction of this court under section 100 of the Code of Civil Procedure this appeal deserves to be dismissed in limine. Order accordingly.

(D.B.Bhosale, J.)